

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 NEAE-00 SSO-00 INRE-00
NSCE-00 USIE-00 CIAE-00 DODE-00 PM-04 H-01 INR-07
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O P 171200Z MAY 77
FM AMEMBASSY ISLAMABAD
TO SECSTATE WASHDC IMMEDIATE 1690
INFO AMEMBASSY DACCA PRIORITY
AMEMBASSY KABUL PRIORITY
AMEMBASSY NEW DELHI PRIORITY
AMEMBASSY PARIS PRIORITY
AMEMBASSY TEHRAN PRIORITY
AMCONSUL KARACHI PRIORITY
AMCONSUL LAHORE PRIORITY
CINCPAC HONOLULU HI PRIORITY

C O N F I D E N T I A L ISLAMABAD 5085

CINCPAC FOR POLAD

E.O. 11652: GDS
TAGS: PGOV, PINT, PK
SUBJECT: PAKISTAN'S SEVENTH CONSTITUTIONAL AMENDMENT

1. ON MAY 13 PRIME MINISTER BHUTTO PROMISED THE NATION
IN A JOINT SESSION OF PARLIAMENT THAT HIS GOVERNMENT
WOULD SPEEDILY INTRODUCE A BILL CALLING FOR A CONSTITU-
TIONAL AMENDMENT THAT WOULD ENABLE HIM TO GO TO THE PEOPLE
IN A REFERENDUM VOTE OF CONFIDENCE. EVENING OF MAY 16,
PAKISTAN'S NATIONAL ASSEMBLY AND SENATE QUICKLY PASSED
AMENDMENT BILL AND THE SAME NIGHT THE PRESIDENT SIGNED
THE ACT, WHICH BECAME PAKISTAN'S SEVENTH CON-
STITUTIONAL AMENDMENT, THE THIRD WITHIN TWELVE
MONTHS.

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2. THOUGH BILLED AS A MEASURE TO ENABLE A
REFERENDUM, THE ACTUAL AMENDMENT HAS THREE DISTINCT
PARTS, ONE FOR THE REFERENDUM AND TWO UNEXPECTED
ADDITIONS.

3. REFERENDUM: ACCORDING TO THE AMENDMENT, THE PM

MUST NOTIFY THE PRESIDENT HE WANTS TO HOLD A REFERENDUM TESTING THE CONFIDENCE OF THE PUBLIC IN HIS PRIME MINISTERSHIP. PARLIAMENT MUST THEN PASS A LAW LAYING DOWN THE GROUND RULES FOR THE REFERENDUM. THIS LAW MUST CREATE A REFERENDUM COMMISSION AND SPECIFY THE MANNER AND MODE OF HOLDING THE REFERENDUM. THE PRESIDENT THEN CALLS FOR THE REFERENDUM. ANY DISPUTE ABOUT VOTE-COUNTING IS DECIDED BY THE REFERENDUM COMMISSION; COURTS ARE BARRED FROM HEARING CASES ABOUT IT. IF THE PM FAILS TO GET MAJORITY OF THE VOTES CAST HE IS "DEEMED TO HAVE TENDERED HIS RESIGNATION WITHIN THE MEANING OF ARTICLE 94" OF THE CONSTITUTION. (COMMENT: BY REQUIRING PARLIAMENT TO LAY THE GROUND RULES RATHER THAN INCLUDING THEM IN THE AMENDMENT, THE PM HAS SAGELY CHOSEN TO LEAVE OPEN HIS OPTIONS ON HOW TO ADMINISTER THE REFERENDUM. HE STILL HAS ROOM TO MANEUVER ON ALL THE MODALITIES. FURTHERMORE, SHOULD THE REFERENDUM BE HELD AND HE LOSES, HIS OPTIONS STILL REMAIN SOMEWHAT OPEN. UNDER ARTICLE 94, BHUTTO WOULD REMAIN PM UNTIL THE PRESENT NATIONAL ASSEMBLY CHOOSES A SUCCESSOR. END COMMENT.)

4. GOVERNORS: THE SECOND PART OF THE AMENDMENT AFFECTS THE SELECTION OF PROVINCIAL GOVERNORS. THE FIFTH AMENDMENT REQUIRES THAT GOVERNORS NOT BE PERMANENT RESIDENTS OF THE PROVINCE WHERE THEY HOLD OFFICE. UNDER THE SEVENTH AMENDMENT A PERMANENT RESIDENT OF A PROVINCE MAY BE ITS GOVERNOR DURING TIMES OF DECLARED EMERGENCY, BUT ONLY AS LONG AS THE

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EMERGENCY LASTS. WE ASSUME THIS PROVISION WAS ADDED BECAUSE DURING THIS POLITICAL CRISI THE PM DOES NOT WANT TO FACE THE DELICATE QUESTION OF APPOINTING NEW GOVERNORS OR SHIFTING THE PRESENT ONES TO OTHER PROVINCES.

5. MARTIAL LAW: THE THIRD PORTION OF THE AMENDMENT, ALSO UNANNOUNCED TO THE PUBLIC BEFORE ITS INTRODUCTION IN PARLIAMENT, BARS ANY COURT FROM QUESTIONING THE IMPOSITION OF MARTIAL LAW (I.E., THE GOP'S USE OF THE MILITARY TO HELP CIVILIAN LAW ENFORCEMENT AUTHORITIES UPHOLD PUBLIC ORDER DURING THE EMERGENCY). THE OPPOSITION HAS LODGED SEVERAL CASES IN LAHORE AND KARACHI HIGH COURTS QUESTIONING THE CONSTITUTIONALITY OF MARTIAL LAW AND THE SEVENTH AMENDMENT IMMUNIZES THE GOP FROM SUCH PROCEEDINGS RETROACTIVE TO APRIL 21, 1977, THE DAY THE EMERGENCY WAS DECLARED. TROOPS WERE CALLED INTO LAHORE, KARACHI AND HYDERBAD BEGINNING APRIL 22

AND CASES ON THIS ISSUE WERE TAKEN TO THE COURTS
ONLY AFTER THAT TIME.
CONSTABLE

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